

### **REMARKS**

In response to the Office Action mailed August 31, 2004, the Applicant respectfully requests that the Examiner enter the above amendments and consider the following remarks. Claims 1, 6, and 14 have been amended to more clearly describe embodiments of the invention. As a result, claims 1-20 are pending in the application. The Applicant respectfully requests further examination and reconsideration of the application in light of the amendments and accompanying remarks.

#### **Rejection of Claims 6, 14, 19, and 20 Under 35 U.S.C. § 102(b)**

The Examiner rejected claims 6, 14, 19, and 20 under 35 U.S.C. § 102(b) as being anticipated by Frizzell. The Applicant respectfully traverses the rejection. The Applicant has amended claims 6 and 14 to more clearly describe embodiments of the present invention in which the band forms a closed loop.

Frizzell fails to teach or suggest every element of the claims as amended. In particular, as shown in Figure 1 and described in column 1, lines 46-50, the wire brace 16 taught by Frizzell terminates at opposite ends of rail 11. As a result, the wire brace 16 does not form a closed loop such as in the claimed invention. Therefore, the Applicant respectfully submits that Frizzell cannot support the rejection of claims 6, 14, 19, and 20 under 35 U.S.C. § 102(b).

#### **Rejection of Claims 1-5, 7-13, and 15-18 Under 35 U.S.C. § 103(a)**

The Examiner rejected claims 1-5, 7-13, and 15-18 under 35 U.S.C. § 103(a) as being obvious over Frizzell in view of Applicant's admitted prior art (AAPA). The

Applicant respectfully traverses the rejection. The Applicant has amended each of the independent claims to more clearly describe embodiments of the present invention in which the band forms a closed loop. The AAPA does not overcome the shortcomings of Frizzell with respect to the independent claims.

In addition, with regard to claims 1, 5, and 8-13, the Examiner asserts that the AAPA discloses that the use of a banding machine is well established within the art. The Applicant respectfully traverses this assertion. Banding machines are commercially available as set forth in the application. However, banding machines have typically been used in other unrelated arts. There is no teaching or motivation provided by the cited art to use a banding machine to band a fence section. Moreover, with respect to dependent claims 12 and 13, there is no teaching or suggestion in the cited art to band a fence section for shipping and installation, thereafter removing the band from the fence section.

With regard to claims 2-4, 7, and 15-18, the Examiner has asserted that it would have been obvious based on the AAPA to band a fence section comprised of rails, wherein each rail has a channel or is formed of plastic. The Applicant respectfully traverses this assertion. There is no teaching or suggestion in the cited art to band a fence section having these characteristics. In particular, the fence assembly taught by Frizzell does not teach or suggest a fence section having these characteristics. Moreover, Frizzell fails to provide the necessary motivation for banding a fence section that has these characteristics.

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Therefore, in light of each of the above reasons alone or in combination, the Applicant respectfully submits that Frizzell in view of the AAPA cannot support the rejection of claims 1-5, 7-13, and 15-18 under 35 U.S.C. § 103(a).

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Conclusion

The Applicant has distinguished claims 1-20 over the cited references. Therefore, the Applicant respectfully submits that the present application is now in condition for allowance, and such action is earnestly requested.

Respectfully submitted,

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